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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,314	08/01/2006	Siew Kim Lee	DAIRY88.015APC	6941
20995	7590	03/02/2010	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			KRAUSE, ANDREW E	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			03/02/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 2/11/10 have been fully considered but they are not persuasive.
2. Applicant argues that Wahlgreen fails to teach each limitation of the present claims. Specifically, applicant contends that the pasteurization step disclosed in Wahlgreen is not a cooking step as required in the claims.
3. Applicant argues that the pasteurization step in Wahlgreen and the cooking step recited in the claims serve different purposes. Initially, the cooking step as in the claims recites no intended purpose. Claim 1 recites simply, "subjecting the material with the desired pH to a cooking step". The claim does not recite any particular time and temperature, or desired result (i.e. some degree of protein denaturation). Furthermore, though the cooking/heating step in Wahlgren is intended for pasteurization, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
4. With respect to the temperatures used in Wahlgren, temperatures up to 80 C are disclosed (col. 4, lines 5-15). This clearly overlaps the range of cooking temperatures in

the instant specification (though unclaimed) of 50 C to the boiling point of the mixture. Regarding the 'very little expected denaturation of whey proteins', it is unclear what degree of denaturation applicant considers to be required for the invention. Figure 1 of Dannenberg shows 70 degrees, 600 seconds (10 minutes) to intersect the 5% BLG denaturation curve, and 70 degrees, 6000 seconds (substantially less than the maximum 4 hours in Wahlgren) to approach 60 % BLG denaturation. Dannenberg shows higher amounts of denaturation at 80 C in shorter time periods. Thus, contrary to applicants assertion, in view of the Dannenberg article, it would appear that the skilled artisan would expect a functional change as a result of using the pasteurization conditions disclosed in Wahlgren (65-80 C, 10 minutes-4 hours).

5. Similarly, with respect to preventing syneresis, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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